IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 139/2004
M/S CHANDI & COMPANY Vs. STATE OF RAJASTHAN & ANR.
&
(2) S.B. CIVIL WRIT PETITION NO. 5719/2003
M/S CHANDI & COMPANY Vs. STATE OF RAJASTHAN & ANR.

DATE: 19.09.2007

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. R.P. Vijay for the petitioners.

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Since these two writ petitions are arising out of a common judgment dated 09.04.2003 passed by the Additional District Judge No.4, Jaipur City, Jaipur and the order dated 22.02.2001 passed by the Additional Civil Judge (Jr. Division)) No.2, Jaipur City, Jaipur, therefore, they are decided by this common order.

Brief facts of the case are that the respondents on 25.07.2000 published notice inviting tenders for construction of Muglani Distributories from RD 3480 to 7158 Mtrs. The period for completion was eight months. Since the petitioner was not able to complete the said construction work within the stipulated period, therefore, the respondents passed the order dated 09.02.2001 and forfeited the earnest

money deposited by the petitioner.

Aggrieved and dissatisfied with the said order dated 09.02.2001, the petitioner filed a suit for permanent injunction praying that the earnest money deposited by him may not be forfeited and the work order dated 09.02.2001 be declared illegal and not bound by the petitioner to act upon for executing the work. Along with the suit for permanent injunction, an application for temporary injunction under Order 39 Rule 1 and 2 CPC was also filed by the petitioner, but vide order impugned dated 22.02.2001 passed by the Additional Civil Judge (Jr. Division) No.2, Jaipur City, Jaipur and the order dated 09.04.2003 passed by the Appellate Authority i.e Additional District Judge No.4, Jaipur City, Jaipur, the temporary injunction application has been rejected as both the Courts below have not found any prima-facie case in favour of the petitioner.

The aforesaid orders dated 22.02.2001 and 09.04.2003 are challenged by the petitioner by way of this writ petition on the ground that as per condition No.7 as mentioned in the notice dated 25.07.2000, the land acquisition proceedings to the extent of the compliance of Sections 4 and 6 of the Act has been completed and further proceedings are under progress

and thus, the land has not been handed over to the petitioner for executing the work.

The petitioner further referred condition No.8 of the notice and also referred Clause 9(ii) of the Public Works Financial & Account Rules challenging the jurisdiction of the authority stating that competent authority is Additional Chief Engineer/ Chief Engineer and Chief Engineer was only competent to accept the tenders.

It is also alleged that as per Clause 11, the tenders for works shall remain open for acceptance for the period from the date of opening of financial bid and for tenders to be accepted by the Additional Chief Engineer/ Chief Engineer, the time is 60 days and further mentioned that if any tenderer withdraws his tender prior to expiry of said validity period or mutually extended period shall without prejudice to any other right or remedy, be at liberty to forfeit the amount of earnest money.

I have considered the submissions made on behalf of the petitioner and have also gone through the order impugned dated dated 09.04.2003 passed by the Additional District Judge No.4, Jaipur City, Jaipur and the order dated 22.02.2001 passed by the Additional Civil Judge (Jr. Division)) No.2, Jaipur City, Jaipur.

Both the Courts below have given concurrent findings while rejecting the temporary injunction application filed by the petitioner and observed that no prima-facie case is made out in favour of the petitioner.

With regard to the submissions made before this Court, since the suit for permanent injunction is still pending, therefore, all the objections which are raised here in this writ petition, can be raised before the Court below. Thus, in my considered view, I find no illegality or error apparent on the face of the record and both the impugned orders dated 22.02.2001 and 09.04.2003 passed by the Courts below require no interference by this Court.

Consequently, both the writ petitions fail and the same are accordingly dismissed.

The Stay Application No. 136/2004 in S.B.C.W. Petition No. 139/2004 has already been rejected vide order dated 24.08.2005.

The Stay application No. 4695/2003 in S.B.C.W. Petition No. 5719/2003 also stands rejected.

(K.S. RATHORE),J.

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